

ALEUTIAN LIVESTOCK CORPORATION, Appellant;
NATIVE VILLAGE OF NIKOLSKI and
THE ALEUT CORPORATION, Protestants

IBLA 73-76

Decided August 9, 1973

Appeal from a letter decision of Anchorage District Office renewing grazing lease (A-030544) through the end of 1973 and annually thereafter until the lands involved are conveyed to the natives.

Remanded for hearing.

Alaska: Grazing -- Rules of Practice: Hearings

By statute and regulation, any lessee or applicant for grazing privileges under the Alaska Grazing Act may obtain a hearing before an Administrative Law Judge to procure a review of any action or decision of the authorized officer, by following the prescribed procedure. Where the District Manager mistakenly directed the appeal to this Board, the case will be remanded for a hearing on the merits.

Alaska: Grazing -- Alaska Native Claims Settlement Act -- Rules of Practice: Hearings

Where the District Manager denies an application for a long-term lease under the Alaska Grazing Act in light of the fact that the Aleut Corporation and the native village of Nikolski protested the granting of the application on the ground that they are entitled to select these lands under the Alaska Native Claims Settlement Act, the Corporation and the village may be regarded as proper parties upon a hearing of the case.

APPEARANCES: George A. Horkan, Jr., Esq., of Powell, Horkan, and Powell, Washington, D.C., and H. Russel Holland, Esq., of Holland & Thornton of Anchorage, Alaska, for appellant; Donald H. Green, Esq., and Stephen M. Truitt, Esq., of Wald, Harkrader and Ross, Washington, D.C., and John Anthony Smith, Esq., of Kay, Miller, Libbey, Kelly, Christy and Fuld, Anchorage, Alaska, for protestants.

OPINION BY MR. STUEBING

Aleutian Livestock Corporation has appealed from a letter decision dated June 15, 1972, of the Anchorage District Office, Bureau of Land Management, granting appellant a grazing lease on Umnak Island through December 31, 1973, and annually thereafter until the lands involved are conveyed to the natives under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613 (Supp. II, 1973).

Appellant's lease, involving some 115,500 acres, expired on May 11, 1972. In its application for renewal filed on December 9, 1971, pursuant to the Alaska Grazing Act of March 4, 1927, 48 U.S.C. §§ 471, 471a-471o (1958), appellant requested a 55-year lease or, in the alternative, a 20-year lease. Appellant claims that a long-term lease is a prerequisite to acquiring the necessary capital to finance the livestock operation. The corporation alleges that severe financial hardship in the seven-figure range will result if it is not issued a long-term lease, that the company will cease to operate, and that the economy of the community will suffer.

In his decision denying the long-term lease the District Manager took into account objections to such a lease raised by the native village of Nikolski and the Aleut Corporation. Under the Alaska Native Claims Settlement Act there may be native selection of the land covered by the lease in issue, and the protestants contend that a long-term lease would deprive them of the benefits of the Act and thereby defeat the intent of the legislation. However, see 43 U.S.C. § 1616(E)(3) (Supp. II, 1973). The decision wrongly advised that any appeal therefrom should be directed to this Board, as prescribed by 43 CFR 1840, now 43 CFR 4.400 (1972). In compliance with that advice, a timely appeal was filed by the Aleutian Livestock Corporation from the action of the District Manager, and briefs were submitted by appellant and also by the native village of Nikolski and the Aleut Corporation protesting the granting of an application for a long-term lease. See 43 CFR 4.450-2.

The statute, 43 U.S.C.A. 316m (Supp. 1973), affords an opportunity for a hearing in such cases. The implementing regulation, 43 CFR 4131.5-2, reads as follows:

Any lease of or applicant for grazing privileges may procure a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. * * *

Appellant has requested such a hearing. The native village and the regional corporation have indicated that if the issue of financial hardship is going to be considered in the determination of the case, they request a hearing also. Since the regulation invests appellant with the right to a review of the action of the District Manager before an Administrative Law Judge, we find that a hearing on the merits of this case is necessary. Due to the fact that the native village and the Aleuts have asserted an interest in this case based upon their right to select at least a substantial amount of the land in question, we find that they may be regarded as proper parties upon a hearing of the case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case is remanded for referral to an Administrative Law Judge.

Edward W. Stuebing, Member

We concur:

Newton Frishberg, Chairman

Joseph W. Goss, Member

